

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 03-185
Commission's Rules to Establish Rules)	
for Digital Low Power Television and)	
Television Translator Stations)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	
Amendment of Part 15 of the Commission's)	ET Docket No. 14-175
Rules to Eliminate the Analog Tuner)	
Requirement)	

To: Office of the Secretary
Attention: The Commission

COMMENTS OF JUAN CARLOS MATOS BARRETO

Juan Carlos Matos Barreto ("Matos"), by counsel, hereby respectfully submits his Comments in response to the Commission Notice of Proposed Rulemaking,¹ which invites comments on a number of issues involving low power television ("LPTV"). Among other matters, the *Third Notice* states that it seeks comment on "whether to allow LPTV stations on digital television Channel 6 (82-88 MHz) to operate analog FM radio-type service on an ancillary or supplementary basis pursuant to Section 73.624(c) of the rules."²

¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) ("*Third Notice*").

² *Id.*, at 12554, para. 47.

BACKGROUND

Matos is both the licensee of and an applicant for several digital LPTV stations located in Puerto Rico, including a digital station licensed to operate on channel 6. As such, Matos has a direct interest in this issue.

The Commission notes that some analog LPTV stations licensed to operate on Channel 6 are currently operating with limited visual programming and an audio signal that is programmed like a radio station. FM radio listeners are able to receive an audio portion of the LPTV signal at 87.76 mHz, adjacent to non-commercial educational FM channel 201 (88.1 mHz). However, when LPTV stations transition to digital operation, they will not be able to provide such radio service because the digital audio portion of the signal can no longer be received by standard FM receivers.³

LPTV stations have proposed engineering solutions which would allow continued FM radio-type operation following the LPTV station's conversion to digital. An example cited by the Commission is a station proposing use of a single transmitter that will allow a digital visual and audio stream as well as a separate analog audio transmission that will permit that station to simultaneously operate a digital LPTV station on channel 6 and an analog FM radio-type service on 87.76 mHz.⁴

Under the Commission's proposal, it would treat the analog FM audio transmission as an "ancillary or supplementary" service offering under Section 74.790(i) of the Commission's rules. Section 74.790(i) of the rules states that "a digital LPTV station may offer services of any nature,

³ *Id.*

⁴ *Id.*, at para. 48.

consistent with the public interest, convenience and necessity, on an ancillary or supplementary basis in accordance with the provisions of Section 73.624(c)...”⁵

The Commission seeks comment on whether to permit LPTV stations operating on digital television channel 6 (82-88 MHz) to operate dual digital and analog transmission systems in such a manner. It is recognized that such stations are LPTV stations and, following the digital transmission, will operate solely in digital. Therefore, the Commission asks whether a digital LPTV station on channel 6 should be able to provide analog FM radio-type service as an ancillary or supplementary service consistent with the Communications Act of 1934, as amended and the Commission’s rules.⁶

**THE PUBLIC INTEREST WOULD BE SERVED BY THE FCC ADOPTION OF
A PROPOSAL TO PERMIT CHANNEL 6 DIGITAL LPTV STATIONS TO PROVIDE A
SUPPLEMENTARY ANALOG FM RADIO-TYPE SERVICE**

The Commission has previously spoken in favor of allowing broadcasters the flexibility to provide ancillary and supplementary services similar to what is proposed here and has concluded that such services are “supported both generally and specifically”⁷ by the Telecommunications Act of 1996.⁸ Therefore, there is justification for approving this proposal.

Here, LPTV channel 6 digital stations will be providing the same free over-the-air LPTV service which the public has come to rely on. The ancillary and supplementary service that such stations will provide will not derogate that required LPTV service. The approach which the

⁵ 47 C.F.R. Section 74.790(i).

⁶ *Third Notice* at 12534-55, para. 49.

⁷ *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809, 12821, para. 31 (1998) (“*Advanced Television Systems*”).

⁸ Pub. L. No. 104-104, 110 Stat. 56, 108-109 (1996), codified at 47 U.S.C. Section 336. (“1996 Telecom Act”).

Commission should follow here “will serve the public interest by fostering the growth of innovative services to the public.”⁹ It will also promote spectrum efficiency and will permit LPTV stations to provide a service that consumers desire.

Moreover, there is no public harm in permitting this ancillary and supplementary service. To the contrary, as previously noted, allowing this service contributes to efficient spectrum by expanding the enhanced use of existing spectrum. Where technological advancement has made it possible for LPTV stations to provide continuing free, over-the-air LPTV service and still have capacity to provide another innovative service, it would be contrary to the public interest to handicap those stations in providing such a service and to deprive consumers of the opportunity to receive that service.¹⁰

Permitting dual digital and analog transmission systems is the type of service which Congress intended when it passed the 1996 Telecom Act to allow digital television stations, including LPTV stations, to offer ancillary or supplementary services. Permitting analog radio service by digital LPTV stations as an ancillary or supplementary service would also greatly benefit small LPTV stations by allowing them to find new business operations and a source of additional income. These stations would establish the separate radio operation on an ancillary basis in addition to their primary digital television service. Such ancillary operation would provide a separate source of income to supplement television operation and provide a separate audience for station programming and advertising.

There is no evidence that there is any potential for a digital LPTV station’s analog FM radio-type service to interfere or disrupt the LPTV station’s digital TV service. Nor is there any

⁹ *Advanced Television Systems*, 12 FCC Rcd at 12822, para. 33.

¹⁰ *Id.* para. 34.

reason to believe that there will be interference to non-commercial FM radio stations operating on channels 201 and 202. In all the years that full service television stations operating on channel 6 have been broadcasting, there is no evidence of any channel 6 LPTV station causing any significant interference to any other broadcast service. Unless it can be shown that operation on 87.76 MHz will create additional interference, the Commission has no need to adopt new rules to protect non-commercial educational FM stations. Obviously, if actual interference does occur, the LPTV station would be responsible for elimination of the interference, with the co-operation of the other station, or immediately suspend operations.

Matos agrees that, since the channel 6 audio signal will be programmed and received like a radio station, analog FM radio-type operations by LPTV stations should be subject to certain, but not all of those Part 73 rules which are applicable to FM radio stations. Those regulations whose applicability will serve the public interest should apply. Just as the Commission handled FM radio multi-casting, the FCC should apply those Part 73 public interest obligations that make sense and are already applicable to FM radio multicast stations to FM radio-type services as well.

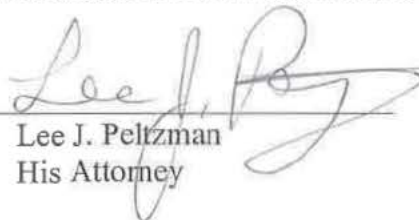
Since Matos intends to broadcast his station to the general public without subscription, the service would not be considered to be a "feeable" service. Matos acknowledges that if the FM radio-type service provided by an LPTV station involves charges to the public, then the LPTV station's ancillary or supplementary analog FM radio service would be deemed "feeable" and subject to a 5% Commission fee. Matos agrees to abide with whatever decision the Commission arrives at with respect to the imposition of such a fee.

CONCLUSION

The Commission should encourage innovative, free over-the-air radio services such as that proposed in the *Third Notice*. For the reasons cited herein, Matos strongly urges the Commission to adopt rules permitting LPTV stations on digital television channel 6 to operate analog FM radio-type service on an ancillary or supplementary basis. Commission approval will result in clear public interest benefits and encourage efficient use of the spectrum.

Respectfully submitted,

JUAN CARLOS MATOS BARRETO

By: 
Lee J. Peltzman
His Attorney

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
202-293-0011

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